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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff,

Plaintiff,

v.

FEDERICO CERETTI, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

MOTION FOR THE ISSUANCE OF LETTER OF REQUEST

1. Plaintiff Mr. Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III (“SIPA”), substantively consolidated with the estate of Bernard L. Madoff (“Madoff”), through the Trustee’s attorneys, Baker & Hostetler LLP, submits this motion for the issuance of a Letter of Request to the Registrar of the Supreme Court in Hamilton, Bermuda for the examination of non-party, Scott Watson-Brown.

2. This motion is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and Bermuda. Service will be effected pursuant to the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents, to which the United States and the United Kingdom, inclusive of Bermuda, are signatories.

3. Mr. Watson-Brown is a foreign citizen and a resident of Bermuda. Thus, the Letter of Request provides the only means of compelling discovery from him.

FACTUAL BACKGROUND

Madoff’s Ponzi Scheme

4. Through BLMIS, Madoff’s investment advisory business, he conducted a decades-long Ponzi scheme of breathtaking scale. His fraud was sustained by infusions of money from around the globe. In particular, domestic and foreign investment vehicles, sometimes colloquially known as “feeder funds,” injected several billions of dollars into his scheme. (*See* Trustee’s Fourth Amended Complaint filed on March 17, 2014, ¶ 1 (ECF No. 100) (hereinafter “FAC”)).

5. Included among these feeder funds were Kingate Global Fund, Ltd. (“Kigate Global”) and Kingate Euro Fund, Ltd. (“Kigate Euro,” and together with Kingate Global, the “Kigate Funds”), both of which are in liquidation proceedings in the British Virgin Islands and in

Bermuda. (*Id.*)

6. Since their inception, the Kingate Funds deposited a combined total of approximately \$1.7 billion with BLMIS and over time withdrew nearly a billion dollars from BLMIS. (*Id.* ¶¶ 2-3.)

7. The Trustee alleges that these withdrawn funds comprise customer property and constitute avoidable transfers under the United States Bankruptcy Code and other applicable law that the Trustee seeks to recover for equitable distribution. (*Id.* ¶ 248.)

8. More specifically, the FAC seeks, *inter alia*, to avoid and recover \$926,351,905 in fraudulent transfers made to the Kingate Funds under the Bankruptcy Code, the New York Debtor Creditor Law, and SIPA § 78fff-2(c)(3). (*Id.* ¶ 8.)

Mr. Watson-Brown's Connections to the Kingate Funds

9. Many of the issues and allegations contained in the FAC are relevant to Mr. Watson-Brown, a Partner at PwC Bermuda, which served as the auditor for the Kingate Funds from approximately 1999 - 2009. These allegations and facts discussed below give rise to the need for the Letter of Request for documents from and, the examination under oath of Mr. Watson-Brown. The transcripts of the Kingate Funds' interviews of Mr. Ceretti and Mr. Grosso, testimony provided by Mr. Ceretti and Mr. Grosso to third parties, the review of documents produced to the Trustee, and depositions taken by the Trustee in this proceeding also establish that Mr. Watson-Brown has knowledge that is highly relevant to the Trustee's claims in the FAC.

10. Following an introduction to Madoff by the head of a large feeder fund, Tremont (Bermuda) Limited ("Tremont") (*id.* ¶ 94), Mr. Ceretti and Mr. Grosso formed Kingate Global in 1994 in the British Virgin Islands ("BVI"). Kingate Global opened an account with BLMIS that same year. By that time, BLMIS would accept only institutional investors.

11. Mr. Ceretti and Mr. Grosso were sophisticated investment professionals with

decades of combined experience in the investment industry.

12. In 1996, Mr. Ceretti and Mr. Grosso created a sub-fund of Kingate Global to attract investments in Deutsche Marks that would then be converted to U.S. currency and deposited with BLMIS. That same year, the sub-fund opened a customer account with BLMIS. In 2000, that sub-fund became a separate BLMIS feeder fund, Kingate Euro, also formed in the BVI, to solicit investments abroad in Euros that would then be converted to U.S. currency and deposited with BLMIS. Kingate Euro assumed the rights to the sub-fund's account with BLMIS. Mr. Ceretti and Mr. Grosso structured the Kingate Funds separately, but they operated relative to BLMIS substantially the same.

13. At the time they formed the Kingate Funds, Mr. Ceretti and Mr. Grosso headed an asset management and investment advisory firm in London called FIM Limited. It was founded by Mr. Grosso in 1981 (*id.* ¶¶ 35, 49), but Mr. Ceretti became an equal owner in or about 1986. Mr. Ceretti and Mr. Grosso later co-founded FIM Advisers LLP in London, which succeeded FIM Limited in 2005 (*id.* ¶¶ 36, 52).

14. Despite having an existing company that could have managed the Kingate Funds, Mr. Ceretti and Mr. Grosso formed a separate management company by the name of Kingate Management Limited ("KML") in Bermuda to act as manager for the Kingate Funds. (*Id.* ¶ 4.) KML employees frequently communicated with, and sought advice from, Mr. Ceretti and Mr. Grosso on the management and operation of KML and the Kingate Funds.

15. Mr. Grosso also frequently communicated directly, or indirectly, with the Kingate Funds' investors, often addressing concerns those investors raised about the Kingate Funds, BLMIS, or Madoff. In fact, one investor referred to Mr. Grosso as "Mr. Kingate." Tremont was appointed as co-manager with KML for Kingate Global, a relationship that lasted about ten years. (*Id.* ¶ 106.)

16. Mr. Ceretti and Mr. Grosso caused KML to engage the FIM entities as a consultant and distributor. The FIM entities provided marketing, analysis, management, and consulting services to KML and the Kingate Funds. As a result, much of KML's management responsibilities were delegated to the FIM entities. (*Id.* ¶¶ 5, 46, 51, 112.)

17. FIM had a robust due diligence process and marketed itself to the public accordingly. (*Id.* ¶¶ 122-27.) In addition to acting as consultant, at least fourteen of FIM's investment funds were invested in the Kingate Funds. The FIM funds' investments in the Kingate Funds required the performance of due diligence on the Kingate Funds and BLMIS. The diligence conducted by FIM is part of the cumulative knowledge that can be imputed to the Kingate Funds via Mr. Ceretti and Mr. Grosso.

18. On Mr. Ceretti's and Mr. Grosso's direction, the Kingate Funds engaged other service providers for the Kingate Funds, including Citi Hedge Fund Services Limited ("Citi Hedge"), based in Bermuda, as administrator, HSBC Bank Bermuda ("HSBC"), as custodian, and PricewaterhouseCoopers ("PwC"), through its Bermuda division PwC Bermuda, as auditor. (*Id.* ¶¶ 72, 80, 135.)

19. Mr. Ceretti and Mr. Grosso have first-hand knowledge of the flow of the Kingate Funds' assets to and from HSBC, and gave direction as to the movement of those funds to and from BLMIS, or to the Kingate Funds' other service providers. Mr. Ceretti and Mr. Grosso also have first-hand knowledge of the roles performed by Citi Hedge, HSBC, PwC, and PwC Bermuda on behalf of the Kingate Funds, and the concerns raised by these service providers about BLMIS in the course of performing their roles.

20. To complete their business enterprise relative to investing with BLMIS, Mr. Ceretti and Mr. Grosso formed estate trusts in Jersey, and shell companies, through which they beneficially owned KML. Through El Prela Trust, and its holding companies, Mr. Ceretti

personally received millions of dollars in management fees paid to KML as a result of its work on behalf of the Kingate Funds. (*Id.* ¶¶ 54, 257.) Through The Ashby Trust, and its holding companies, Mr. Grosso personally received millions of dollars in management fees paid to KML as a result of its work on behalf of the Kingate Funds. (*Id.* ¶¶ 63, 257.)

21. Throughout the Kingate Funds' fourteen years of operation, Mr. Ceretti and Mr. Grosso spoke directly with Madoff and others at BLMIS, and met with Madoff on multiple occasions. (*Id.* ¶¶ 99, 100-02.)

22. After Madoff confessed to running a Ponzi scheme in 2008, the Kingate Funds went into winding up proceedings in the BVI and Bermuda. KML also went into a winding up proceeding in Bermuda.

23. Mr. Ceretti and Mr. Grosso were essential, and dominant, parties to the enterprise they engineered to benefit from Madoff's fraud, and they acted through the FIM entities. FIM Limited, Mr. Ceretti, and Mr. Grosso all have knowledge concerning the Kingate Funds, KML, the FIM entities, their trusts and shell companies, all of which is relevant to the allegations in the Trustee's FAC and give rise to this Request.

24. PwC Bermuda acted as auditor for the Kingate Funds from approximately 1999-2009.

25. Mr. Watson-Brown is currently a partner with PwC Bermuda and was also the engagement partner at PwC Bermuda for the Kingate Funds.

26. As part of PwC Bermuda's role as auditor of the Kingate Funds, Mr. Watson-Brown visited the offices of BLMIS in 2002 and 2004. Mr. Watson-Brown also had numerous conversations with Messrs. Ceretti and Grosso, as well as Mr. Christopher Wetherhill, regarding the audits of the Kingate Funds including discussions with Mr. Grosso regarding internal controls and sight visits to BLMIS.

27. Mr. Watson-Brown has knowledge that is highly relevant to the claims in this proceeding and the Trustee has a need for the documents in Mr. Watson-Brown's possession to be produced to the Trustee.

28. Specifically, the Trustee anticipates that Mr. Watson-Brown will be able to provide further information in relation to the issues and allegations in paragraphs 107-09, 110, 115, 118, 135, 136, 142,-43 145, 200-04, 218, 234-37, 239-41, 242-46, and 254-58 of the FAC.

29. For the above reasons, the Trustee believes that the proposed Letter of Request, attached hereto as Exhibit 1, is just and appropriate and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: New York, New York
July 24, 2018

Respectfully submitted,

/s/ Geraldine E. Ponto

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